

Message Text

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ARA:GLISTER (DRAFT)
ARA:RARELLANO
SCS:SDOBRECHUK
L/HR:CRUNYON
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FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA NIACT IMMEDIATE
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO
AMCONSUL RECIFE

C O N F I D E N T I A L STATE 223986

E.O. 11652: GDS

TAGS: SHUM, PGOV, CASC, BR (CAPUANO, THOMAS; ROSEBAUGH,

SUBJECT: NOTE AND PENDING TALKS ON ARRESTS OF US CITIZENS

REF: BRASILIA 7384

1. EMBASSY SUGGESTED TEXT OF PROPOSED NOTE STATES WELL OUR
DISAPPOINTMENT WITH THE POLICE BOARD INQUIRY AND OUR DIS-
SATISFACTION WITH REPEATED BRAZILIAN FAILURE UNDER THE
VIENNA CONSULAR CONVENTION TO GIVE TIMELY NOTICE OF ARRESTS
OF AMERICAN CITIZENS.

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2. DEPARTMENT SUGGESTS THE FOLLOWING MINOR ALTERATIONS
TO THE NOTE:

THIRD PARAGRAPH (SUBSECTION B) TO READ QUOTE STATE
AUTHORITIES FAILED TO GIVE NOTICE WITHOUT DELAY TO THE DE-
TAINEES OF THEIR RIGHTS UNDER ARTICLE 36(1)(B) OF THE
VIENNA CONSULAR CONVENTION OF 1963, AND TO GRANT WITHOUT

DELAY THE REPEATED REQUESTS OF THE AMERICAN PRISONERS THAT THE AMERICAN CONSULATE BE NOTIFIED, AS REQUIRED BY ARTICLE 36(1)(B) OF THE VIENNA CONVENTION. UNQUOTE (TWO WORDS CHANGED AND A NUMBER ADDED).

FOLLOWING PARAGRAPH (FOURTH) TO READ: QUOTE THE US GOVERNMENT, THEREFORE, CONTINUES TO HOLD THAT PERNAMBUCO POLICE OFFICIALS HANDLING THE ARREST AND DETENTION OF CAPUANO AND ROSEBAUGH FRUSTRATED THE RIGHT OF ACCESS OF THE U.S. CONSULATE AND OF THE AMERICAN NATIONALS UNDER THE VIENNA CONVENTION, AND THAT THE ACTIONS OF THESE OFFICIALS CONSTITUTE A CLEAR VIOLATION OF THE DUTIES OWED BY THE GOVERNMENT OF BRAZIL UNDER THE CONVENTION. UNQUOTE (SEVERAL WORDS CHANGED).

3. DEPARTMENT AUTHORIZES THE EMBASSY IN ITS DISCRETION AND AT AN EARLY OPPORTUNITY TO DELIVER THE NOTE.

4. NOTE LEAVES OPEN TO BRAZIL CHOICE OF ADDITIONAL STEPS TO BE TAKEN. IN ROSEBAUGH AND CAPUANO CASE, IT WOULD BE HELPFUL AND APPROPRIATE IF THE FEDERAL GOVERNMENT (OR STATE GOVERNMENT) WOULD INSTITUTE A JUDICIAL INQUIRY INTO THE HANDLING OF THE CASE. THE PERNAMBUCO CHAPTER OF THE BRAZILIAN BAR ASSOCIATION HAS ALREADY CALLED FOR SUCH AN INVESTIGATION OF THE ROUBOS
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E FURTOS PRISON, AS HAS THE COMMENTARY ON THE POLICE INQUIRY BY THE ARCHDIOCESE OF OLINDA AND RECIFE. THIS POINT COULD BE RAISED BY EMBASSY IN ORAL PRESENTATION AT SUCH TIME AS EMBASSY BELIEVES APPROPRIATE, AND DEPENDING ON RESPONSES TO FOLLOWING QUESTIONS.

5. TO ASSIST IN DEALING WITH ANY DIFFICULTIES THE GOB MAY RAISE AND TO HELP THE USG CONSIDER FURTHER POSSIBLE ALTERNATIVE COURSES OF ACTION, INCLUDING FORMAL SPECIFIC REQUEST FOR A JUDICIAL INQUIRY, DEPARTMENT REQUESTS ANSWERS TO FOLLOWING QUESTIONS ON BRAZILIAN LAW. (IT IS REQUESTED THAT TO THE EXTENT POSSIBLE THE VIEWS OF PERSONS COMPETENT IN BRAZILIAN LAW BE OBTAINED.)

(A) WHERE DO FEDERAL AND STATE JURISDICTION BEGIN AND END IN THE MISSIONARIES' CASE? SPECIFICALLY, IS THERE ANYTHING TO PREVENT THE FEDERAL AUTHORITIES FROM CONDUCTING THEIR OWN INVESTIGATION OF THE FACTS, STARTING WITH THE QUESTION OF NOTICE AND ACCESS IN CONFORMITY WITH ARTICLE 36 OF THE CONSULAR CONVENTION?

(B) AT THIS POINT, IS THERE ANY LEGAL OBSTACLE TO A PROPER AND COMPLETE JUDICIAL INQUIRY, WHETHER STATE OR FEDERAL?

6. IF A FOLLOW UP JUDICIAL INQUIRY IS LEGALLY POSSIBLE, HOW DOES THE EMBASSY VIEW THE CHANCES OF HAVING A FAIR, FULL HEARING AND DECISION AS OPPOSED TO ANOTHER WHITE-WASH BY A COURT UNDER PRESSURE FROM THE GOVERNMENT? DOES THE EMBASSY BELIEVE THAT PRESSURE ON THE GOB FOR A JUDICIAL INQUIRY WILL BE COUNTERPRODUCTIVE IN THE LONG RUN?

7. DEPARTMENT WOULD ALSO APPRECIATE EMBASSY ASSESS-
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MENT AND COMMENT ON THE FOLLOWING, MORE HYPOTHETICAL, COURSES OF ACTION, SO THAT CONSIDERATION CAN BE GIVEN TO POSSIBLE FOLLOW UP ACTIONS TO NOTE AND ORAL PRESENTATION SHOULD CIRCUMSTANCES WARRANT:

(A) DISCUSSING WITH ROSEBAUGH AND CAPUANO, AND THEIR SPONSORING ORGANIZATIONS, THE POSSIBILITY OF FORMAL PRIVATE CLAIMS FOR DAMAGES (THE MERE THREAT OF WHICH MIGHT SPUR THE BRAZILIAN GOVERNMENT TO TAKE SOME FURTHER REMEDIAL ACTION), WITH POSSIBLE EVENTUAL SUPPORT THROUGH DIPLOMATIC CHANNELS. IN REGARD TO THIS APPROACH, DEPARTMENT WOULD APPRECIATE KNOWING: WHAT IS THE STATE OF THE LAW WITH RESPECT TO THE CIVIL OR CRIMINAL LIABILITIES OF ALL RESPONSIBLE PARTIES, OFFICIAL OR PRIVATE? CAN THE FEDERAL OR STATE GOVERNMENT BE SUED IN SUCH CIRCUMSTANCES?

(B) ASKING THE GOB TO INVITE THE IAHRG TO ESTABLISH ALL FACTS.

(C) SUPPORTING CAPUANO AND ROSEBAUGH AND PARENT ORGANIZATIONS IN RAISING THE MATTER WITH THE IAHRG.

(D) RAISING THE MATTER OURSELVES WITH THE IAHRG.

8. DEPARTMENT RECOGNIZES THAT SEVERAL OF THE ABOVE "OPTIONS" INVOLVE SERIOUS OBSTACLES, E.G. IMPROBABILITY THAT GOB WOULD PERMIT ANY INTERVENTION BY IAHRG; POSSIBLE RELUCTANCE OF MISSIONARY ORGANIZATIONS TO ANTAGONIZE GOB BY FURTHER ACTIONS AS WELL AS RELUCTANCE TO CONTEMPLATE POSSIBLE PROTRACTED OR EXPENSIVE ACTION THROUGH COURT SYSTEM. HOWEVER, EMBASSY'S COMMENTS ON THESE "THEORETICAL" ACTION IDEAS WILL BE USEFUL IN
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FULLY ASSESSING THE PROBLEM. VANCE

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